THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16351 OF 2006

DATED: 24th AUGUST, 2006.

Between :

K. Ram Reddy … Petitioner

And

1. The Regional Manager, Vijaya Bank,
   III Floor, Babukhan Estate, Basheerbagh,
   Hyderabad, and another. .. Respondents

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ORDER :

The petitioner claims to be the owner and possessor of Plot No.49A situated in Sy.No.10/2 of Hubsiguda village, R.R. District, having purchased the same under a Registered Sale Deed, dated 19-9-1985. It is stated that the original sale deed relating to the said property was lost and as an abundant caution he got issued a notice dated 6-3-2006 in the local dailies cautioning the public not to entertain any transactions in respect of the said property. He also lodged a police complaint dated 7-3-2006 about the missing documents and investigation has been taken up by P.S. Uppal.

While so, the 2nd respondent Bank issued a notice dated 5-7-2006 under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') in which the plot in question was shown as secured asset and it was declared that the Bank would proceed against the same for recovery of their secured debt. The petitioner came to know about that only when the said notice was affixed to the compound wall of the plot in question. Immediately, the petitioner approached the 2nd respondent Bank and on an enquiry it was found that one M/s. Bandi Jewellers availed a loan of Rs.28 lakhs from the 2nd respondent Bank, in connection with which the petitioner's plot was given as security. On verification of the files, it was found that one B. Sadananda Murthy was shown as Proprietor of M/s. Bandi

Jewellers, with whom the petitioner had no acquaintance at all. That apart, it is found that the Brother-in-law of the petitioner by name N. Venkata Reddy impersonated the petitioner and the petitioner's name was shown as guarantor. The petitioner alleged collusion between B. Sadananda Murthy and the officials of the Bank. He also lodged a criminal complaint against his Brother-in-law N. Venkata Reddy, which was registered as Cr.No.560 of 2006, dated 14-6-2006 on the file of Uppal P.S., Cyberabad, in pursuance of which, the said Venkata Reddy was arrested and produced before the competent Court. The petitioner alleged that his Brother-in-law N. Venkata Reddy had committed theft of the documents relating to the plot in question and in collusion with Bank Officials and B. Sadananda Murthy managed to get the loan sanctioned showing the petitioner as guarantor and creating security interest on his plot.

In the circumstances, the petitioner made a representation dated 12-7-2006 to the 2nd respondent Bank by marking copies to the 1st respondent as well as Vigilance Cell bringing to their notice the fraud played against him. The petitioner also got issued a legal notice dated 25-7-2006 calling upon the 2nd respondent to return the original sale deed.

However, the respondents did not return the original sale deed, but, on the other hand, proposed to issue sale notice. It is alleged that the second respondent Bank failed to follow the procedure prescribed for the purpose of granting loans and the officials of the 2nd respondent were hand-in-glove with the principal borrower. Consequently, the valuable property of the petitioner is sought to be sold by playing fraud claiming that a sum of Rs.26 lakhs is due. Hence, this writ petition seeking a Mandamus declaring the action of the respondents in initiating proceedings vide impugned notice dated 5-7-2006 as arbitrary and illegal.

I have heard the learned Counsel for the petitioner and perused

the material on record.

The impugned notice dated 5-7-2006 has been issued under Section 13 (4) of the Securitisation Act calling upon the borrower / guarantor to pay a sum of Rs.25,60,562/- within 30 days failing which the property in question would be sold under the Securitisation Act. In the said notice, M/s. Bandi Jewellers was shown as borrower and the petitioner was shown as guarantor. It also shows that in exercise of powers conferred under Section 13 (2) of the Securitisation Act, Demand Notice was issued on 7-1-2006 and paper publication of the contents of the said notice was made on 15-2-2006. Since there was no response, the possession of the property in question was taken on 5-7-2006.

The petitioner also filed an additional affidavit stating that in response to the legal notice got issued by the petitioner, dated 25-7-2006, the 2nd respondent Bank vide notice dated 31-7-2006 denied all the allegations made by the petitioner and also took strong objection as to the allegations of fraud and collusion made against its staff. It was also stated that the Bank had issued a public notice in Hindu daily calling for objections, if any, but no objections were received and since the Bank had already taken possession of the property, it was not possible to return the sale deed as claimed by him.

From the facts pleaded by the petitioner, it is clear that the matter involves several disputed questions of fact. As a matter of fact, the allegations are against a private person who is none other than brother-in-law of the petitioner and admittedly criminal proceedings are pending against him. Various allegations made against the officials of the Bank as well as his Brother-in-law alleging that he created security by mortgaging the plot in question without the knowledge of the petitioner by impersonation are all issues which require detail enquiry on appreciation of the evidence that may be produced by the concerned parties. Even the allegations of fraud against 2nd respondent Bank cannot be enquired into and decided by this Court

while exercising jurisdiction under Article 226 of the Constitution of India. Hence, it cannot be presumed at this stage that no valid charge was created on the property belonging to him merely on the allegation that the loan was granted on forged loan application with false names. Consequently the relief as prayed for cannot be granted.

It is to be noted that under Section 17 of the Securitisation Act, an efficacious remedy of appeal is provided which may be invoked by any person aggrieved by any of the measures under Section 13 (4) of the Securitisation Act taken by the secured creditor. Such appeal lies to the Debts Recovery Tribunal, having jurisdiction in the matter.

Having regard to the nature of the allegations made by the petitioner, which, as expressed above, cannot be enquired into by this Court while exercising jurisdiction under Article 226 of the Constitution of India, I am of the opinion that the petitioner ought to have availed the remedy of appeal as provided under Section 17 of the Securitisation Act.

For the aforesaid reasons, I am not inclined to entertain this writ petition.

Accordingly, the Writ Petition is dismissed. No costs.

However, this shall not preclude the petitioner to work out the remedy of appeal as available under Section 17 of the Securitisation Act.

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G. ROHINI, J.

Dt. 24-8-2006

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